

Message Text

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PAGE 01 GENEVA 03657 112052Z

20

ACTION IO-13

INFO OCT-01 EUR-12 ISO-00 ACDA-07 CIAE-00 DODE-00 PM-04

INR-07 L-03 NSAE-00 NASA-01 NSC-05 ERDA-05 OES-06

EPA-01 AF-08 ARA-06 EA-07 NEA-10 H-02 PA-01 PRS-01

SP-02 SS-15 USIA-06 FEA-01 CEQ-01 /125 W

----- 068037

R 111919Z MAY 76

FM USMISSION GENEVA

TO SECSTATE WASHDC 9877

INFO USMISSION USUN NEW YORK

AMEMBASSY MOSCOW

C O N F I D E N T I A L GENEVA 3657

E.O. 11652: GDS

TAGS: TSPA, UN, UR

SUBJECT: OUTER SPACE LEGAL SUBCOMMITTEE -- MOON TREATY ARTICLES ON
NATURAL RESOURCES

1. THE SUBCOMMITTEE'S WORKING GROUP ON THE MOON TREATY HAS DEVELOPED A NEW SINGLE TEXT FOR THE ARTICLES RELATING TO NATURAL RESOURCES, WHICH, WITH A FEW MINOR MODIFICATIONS, WE BELIEVE IS A QUITE ACCEPTABLE BASIS FOR AGREEMENT ON THIS LAST MAJOR REMAINING ISSUE. THE TEXT MEETS OUR REQUIREMENTS FOR AVOIDING ANY INFERENCE OF A MORATORIUM ON EXPLOITATION OF LUNAR RESOURCES, ELIMINATES PARA 3 OF ARTICLE X WHICH WOULD HAVE PROHIBITED EXCHANGES OR OTHER ARRANGEMENTS RELATING TO AREAS OR ZONES ON THE MOON, CONTAINS NO PRIOR COMMITMENT TO BECOME A PARTY TO A FUTURE RESOURCES REGIME, AND CONTAINS AN ACCEPTABLE VERSION OF THE COMMON HERITAGE OF ALL MANKIND FORMULA. REMAINING POINTS TO BE DISCUSSED IN THESE ARTICLES ARE ADDRESSED IN PARA 3 BELOW.

2. THE PROPOSED DRAFT TEXT IS AS FOLLOWS:

ARTICLE IX BIS

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 GENEVA 03657 112052Z

THE MOON AND ITS NATURAL RESOURCES ARA A COMMON

HERITAGE OF ALL MANKIND.

ARTICLE X

1. THE MOON (AND OTHER CELESTIAL BODIES) IS (ARE)
NOT SUBJECT TO NATIONAL APPROPRIATION BY ANY CLAIM OF
SOVEREIGNTY, BY MEANS OF USE OR OCCUPATION, OR BY ANY
OTHER MEANS.

2. AREAS OR ZONES ON OR BELOW THE SURFACE OF THE MOON
(OR OTHER CELESTIAL BODIES) SHALL NOT BECOME THE PROPERTY
OF ANY STATE, INTERNATIONAL INTERGOVERNMENTAL OR
NON-GOVERNMENTAL ORGANIZATION, NATIONAL ORGANIZATION OR
ANY OTHER LEGAL ENTITY OR NATURAL PERSON. THE PLACEMENT
OF PERSONNEL, SPACE VEHICLES, EQUIPMENT, FACILITIES,
STATIONS AND INSTALLATIONS ON OR BELOW THE SURFACE OF THE
MOON (OR OTHER CELESTIAL BODIES), INCLUDING STRUCTURES
PERMANENTLY AFFIXED TO THE SURFACE OR SUBSURFACE, SHALL NOT
CREATE A RIGHT OF OWNERSHIP OVER ANY AREAS OR ZONES ON OR
BELOW THE SURFACE OF THE MOON (OR OTHER CELESTIAL BODIES).

ARTICLE X BIS

1. THE MOON SHALL BE FREE FOR EXPLORATION AND USE,
INCLUDING EXPLOITATION OF ITS NATURAL RESOURCES, BY ALL
STATES WITHOUT DISCRIMINATION OF ANY KIND ON A BASIS OF
EQUALITY AND IN ACCORDANCE WITH INTERNATIONAL LAW.

2. STATES PARTIES UNDERTAKE TO ESTABLISH AN
INTERNATIONAL REGIME GOVERNING SUCH EXPLOITATION ON THE
BASIS OF THE PRINCIPLE THAT THE MOON AND ITS RESOURCES
ARE A COMMON HERITAGE OF ALL MANKIND.

3. THE MAIN OBJECTIVES OF SUCH INTERNATIONAL REGIME
TO BE ESTABLISHED SHALL INCLUDE:

(A) THE ORDERLY AND SAFE DEVELOPMENT OF NATURAL
RESOURCES OF THE MOON;

(B) THE RATIONAL MANAGEMENT OF THOSE RESOURCES;

(C) THE EXPANSION OF OPPORTUNITIES IN THE USE AND
EXPLOITATION OF THOSE RESOURCES AND

(D) AN EQUITABLE SHARING IN THE BENEFITS DERIVED
FROM THOSE RESOURCES AMONG ALL STATES.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 GENEVA 03657 112052Z

(WITHOUT PREJUDICE TO THE PRINCIPLES AND OBJECTIVES SET
OUT IN THIS ARTICLE, THE INTERESTS AND NEEDS OF DEVELOPING
COUNTRIES AS WELL AS THE EFFORTS OF THE COUNTRIES WHICH
HAVE CONTRIBUTED TO THE EXPLORATION OF THE MOON SHALL BE
GIVEN SPECIAL CONSIDERATION IN THIS REGARD.)

4. IN ORDER TO DECIDE WHETHER THE EXPLOITATION OF
NATURAL RESOURCES HAS BECOME FEASIBLE WITH A VIEW TO

IMPLEMENTING THE PROVISIONS OF PARAGRAPH 2 OF THIS ARTICLE, THE SECRETARY-GENERAL, AFTER THE ENTRY INTO FORCE OF THIS TREATY, SHALL CONVENE A CONFERENCE OF STATES PARTIES DURING A REGULAR SESSION OF THE GENERAL ASSEMBLY, EVERY TEN YEARS UNLESS TWO-THIRDS OF THE STATES PARTIES REQUEST TO CONVENE EARLIER CONFERENCES TO DECIDE WHETHER THE INTERNATIONAL REGIME IS TO BE ESTABLISHED, ALL STATES PARTIES UNDERTAKE TO TAKE ALL APPROPRIATE MEASURES TO ASSURE THEIR PARTICIPATION AT SUCH CONFERENCES.

5. IF THE CONFERENCE OF STATES PARTIES, PROVIDED FOR IN PARAGRAPH 4 OF THIS ARTICLE, DECIDES THAT THE INTERNATIONAL REGIME SHOULD BE ESTABLISHED, THE SECRETARY-GENERAL SHALL INCLUDE IN THE PROVISIONS AGENDA OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY AN ITEM ON THE METHOD OF ESTABLISHING THE INTERNATIONAL REGIME IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH 2 OF THIS ARTICLE.

6. UNTIL SUCH INTERNATIONAL REGIME IS ESTABLISHED AND WITHOUT PREJUDICE TO THE PROVISION OF ARTICLE V OF THIS TREATY, STATES PARTIES UNDERTAKE THAT ALL THEIR ACTIVITIES WITH RESPECT TO THE (MOON AND THE) NATURAL RESOURCES OF THE MOON SHALL BE CARRIED OUT IN A MANNER COMPATIBLE WITH THE PRINCIPLE MENTIONED IN PARAGRAPH 2 ABOVE AND THE MAIN OBJECTIVES OF THE INTERNATIONAL REGIME TO BE ESTABLISHED.

7. STATES PARTIES SHALL PROMPTLY INFORM THE SECRETARY-GENERAL AS WELL AS THE PUBLIC AND THE INTERNATIONAL SCIENTIFIC COMMUNITY TO THE GREATEST EXTENT POSSIBLE AND PRACTICABLE, OF EACH DISCOVERY OF NATURAL RESOURCES OF THE MOON AND OF EVERY OTHER ACTIVITY UNDERTAKEN THEREON.

CONFIDENTIAL

CONFIDENTIAL

PAGE 04 GENEVA 03657 112052Z

3. COMMENTS:

(A) ARTICLE IX BIS: THE SOVIETS WISH TO ELIMINATE THIS NEW ARTICLE ON GROUNDS THAT ITS SUBSTANCE IS ALREADY FOUND IN ART X BIS PARA 2 AND THAT DOUBLE REFERENCE TO COMMON HERITAGE IS TOO MUCH EMPHASIS. WE BELIEVE IT MAKES VIRTUALLY NO SUBSTANTIVE DIFFERENCE WHETHER IT IS IN OR OUT; WE CAN BE HAPPY IF THE SOVIETS SUCCEED; WE NEED NOT BE CONCERNED IF THEY DO NOT; AND WE SHOULD NOT SPEND MUCH EFFORT OF OUR OWN IN THE DEBATE.

(B) ARTICLE X BIS PARA 3(C) PRESENTLY READS "USE AND EXPLOITATION". WE HAVE INSISTED THAT EXPLOITATION IS SUBSUMED WITHIN THE SCOPE OF "USE" RATHER THAN BEING AN ADDITION TO IT, AND HENCE THAT THIS PROVISION MUST BE MODIFIED TO BE CONSISTENT WITH THE FORMULA AGREED IN

X BIS PARA 1, "USE, INCLUDING EXPLOITATION..." THE SOVIET DELEGATION AGREES WITH THIS POINT AND WILL SUGGEST MODIFICATION OF THE TEXT. THE FINAL SENTENCE OF THIS PARA REMAINS IN BRACKETS AT INDIA'S SUGGESTION, BUT IT HAS BEEN GENERALLY SUPPORTED AND IT IS DOUBTFUL THAT INDIA WILL INSIST ON ITS ELIMINATION.

(C) SCOPE OF THE TREATY: AFTER SEVERAL ATTEMPTS TO PERSUADE THE USDEL TO AGREE TO A FORMULA IN WHICH ONLY THE TITLE AND AN INTRODUCTORY ARTICLE WOULD REFER TO "OTHER CELESTIAL BODIES" AS WELL AS TO THE MOON, THE SOVIET DEL HAS AGREED IN CONVERSATION WITH US NOT TO OPPOSE USE OF THE FORMULA "MOON AND OTHER CELESTIAL BODIES" THROUGHOUT THE TEXT, AS REQUIRED BY THE US INSTRUCTIONS.

4. RECOMMENDATION: THE US DELEGATION RECOMMENDS THAT WE BE AUTHORIZED TO ACCEPT THE DRAFT ARTICLES CONTAINED IN PARA 2 ABOVE WITH THE MODIFICATIONS SUGGESTED IN PARA 3. ABRAMS

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, NATURAL RESOURCES, TEXT, NATURAL SATELLITES
Control Number: n/a
Copy: SINGLE
Draft Date: 11 MAY 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ShawDG
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976GENEVA03657
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760182-0710
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760569/aaaacguy.tel
Line Count: 188
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION IO
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: ShawDG
Review Comment: n/a
Review Content Flags:
Review Date: 06 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <06 MAY 2004 by CollinP0>; APPROVED <31 AUG 2004 by ShawDG>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: OUTER SPACE LEGAL SUBCOMMITTEE -- MOON TREATY ARTICLES ON NATURAL RESOURCES
TAGS: TSPA, UR, UN
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006